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WORLD MARITIME UNIVERSITY
MALMO, SWEDEN

Implications of the Development of Barbados as
a Port of Registry

by

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Richard. O. Alleyne
Barbados

A paper submitted to the Faculty of the World Maritime
University in partial satisfaction of the requirements
for the award of a MASTER OF SCIENCE DEGREE
in
GENERAL MARITIME ADMINISTRATION

The contents of this paper reflect my personal views and
are not necessarily endorsed by the UNIVERSITY.

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Abstract

This paper is addressed to the question of the development of Barbados as a Port of Registry. A basic assumption used, is that one is thinking of a Flag of Convenience and not a normal or closed registry. Hence comparatively little has been said about the latter.

The paper can be said to be basically divided into two parts. Part 1, consisting of the first four chapters, establish a general conceptual framework, whilst the remainder of the paper is based on its application to Barbados.

The first chapter provides some definitions of and explanations on registration and briefly examines the development of FOCs. In this chapter one also looks at the main reasons for having a registry, which are considered to be economic.

Chapter 2 is devoted to an identification of those social, political and other factors which can promote the development of a port of registry.

In chapter 3 the basic hypothesis being tested is that the attitude of traditional maritime powers has generally changed from one of opposition to acceptance and qualified support. Of the various international organisations, UNCTAD and the ITF have been looked at because over the years they have been fore-runners in the attack on FOCs. Of the traditional maritime powers, France and Norway were examined because they have recently been considering significant changes in their

policy regarding registration.

The following chapter basically summarises the conclusions reached in the preceeding chapters and describes the present position of FOCs.

The final chapters describe and analyse the present status of registration in Barbados in relation to the concept previously established. The major conclusion reached is that whilst Barbados is free to offer and to develop FOC facilities, that this should not be seen as an end in itself but as part of a wider maritime development plan.

Implications of the Development of Barbados as
a Port of Registry

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1.0 Introduction

The Barbados Shipping Act 1981-19 entered into force on the 1st December 1982. Prior to this the United Kingdom Merchant Shipping Acts 1894-1965 formed the basis of Barbadian Shipping Legislation.

One of the major considerations behind the creation of this new shipping legislation was to provide the legal machinery for the development of Barbados as a Port of Registry.

The Act along with its subsidiary legislation has not brought any significant increase in the number 1* of vessels registered under the Barbadian flag.

Some consideration has therefore been given to reviewing the present situation of the Barbadian flag with a view to assisting its development. Measures considered to develop the Barbadian flag included a review of the Act to amend it where necessary and embarking on an active promotional programme.

It must be clearly stated here that this paper does not seek to determine whether or not Barbados should try to develop its registration activities. That is a purely political decision, entirely beyond the scope of this paper.

In many ways this paper constitutes a preliminary review of the current situation of the Barbados registry. This is done basically by establishing the prerequisites for the development of a registry in today's context. Determining to what extent Barbados has already satisfied

them and what needs to be done. Apart also from looking at benefits which Barbados could derive from such activities, this paper also tries to examine the possible disadvantages which Barbados could suffer.

Although something is said about "Normal" registries, a basic assumption of this paper is that a country such as Barbados, seeking to develop its registry, is thinking in terms of an open registry. Hence the paper concentrates on the latter type.

The position of Barbados on this issue is by no means considered a unique one and it is thought that a lot of what is discussed will also be relevant to other countries seeking to develop their registries.

1.1. Registration of Ships

1.2. Registration Explained

Registration can be said to be a formal process which results in a vessel acquiring a nationality. It is used as evidence of the right to fly the Flag of the State as well as of the right of ownership and of mortgages. Registration has indeed been an ancient practice. The process of registration involves the observance of the requirements and formalities prescribed under the Merchant Shipping Law and, subject to same, has had to result in:

- (1) the registration being effected through appropriate entries being made in the Register Book maintained for that purpose, and
- (2) a certificate of Registry being issued.

Also, there are statutory provisions relating to related matters such as mortgages, transfer of ownership, change of name, etc.

To ensure compliance with the relevant statutory provisions and to perform the necessary functions, Registrars of ships need to be appointed under the Merchant Shipping Act.

Registration of a ship under a national flag confers benefits, but at the same time imposes obligations. The registering power grants protection in varying measures to the shipowner, the ship itself and all those who sail in her wherever she may be trading, and will uphold the power of her master to command the vessel in accordance with its national law. In its strictest application it can be said that the sovereignty of the State extends also to the ships flying its Flag. Events such as births, deaths and marriages on board are seen as events occurring in the country of registry. Generally, offences committed aboard the ship particularly on the high seas are triable by the courts of the country of the ships flag and according to the criminal law of that country.

The principle of the exclusive jurisdiction of the Flag State over its ships on the high seas 2* makes it necessary that every ship which is lawfully on the high seas should have a nationality, and in order to give its nationality it must be registered in a nation state.

Articles 91, 93 and 94 of the United Nations Convention on the Law of the Sea are relevant to the question of registration of ships. These articles which are given

below, lay down the principles of International Law on this issue.

Article 91

Nationality of Ships

1. Every State shall fix the conditions for the grant of its nationality to ships for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.
2. Every State shall issue to ships which it has granted the right to fly its flag documents to that effect.

Article 92

Status of Ships

1. Ships shall sail under the Flag of one State only and, save in exceptional cases expressly provided for in International Treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its Flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.
2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question in respect to any other State, and may be assimilated to a ship without nationality.

Article 93

----- Ships Flying the Flag of the United Nations, its Spe- cialized Agencies and the International Atomic Energy ----- Agency -----

The preceding Articles do not prejudice the question of ships employed on the official service of the United Nations, its Specialized Agencies or the International Atomic Energy Agency, flying the Flag of the Organization.

Article 94

----- Duties of the Flag State -----

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its Flag.
2. In particular every State shall:
 - (a) maintain a register of ships containing the names and particulars of ships flying its Flag, except those which are excluded from generally accepted International Regulations on account of their small size; and
 - (b) assume jurisdiction under its internal law over each ship flying its Flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.
3. Every State shall take such measures for ships flying its Flag as are necessary to ensure safety at sea with regard, inter alia:

- (a) the construction, equipment and seaworthiness of ships
 - (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments
 - (c) the use of signals, the maintenance of communications and the prevention of collisions
4. Such measures shall include those necessary to ensure:
- (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship.
 - (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that crew is appropriate in qualification and numbers for that type, size, machinery and equipment of the ship.
 - (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with, and required to observe the applicable International Regulations concerning the safety

of life at sea, the prevention of collisions, the prevention, reduction or and control of marine pollution, and the maintenance of communications by radio.

5 In taking the measures called for in Paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the Flag State. Upon receiving such a report, the Flag State shall investigate the matter and, if appropriate take any action necessary to remedy the situation.

7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its Flag and causing loss of life or serious injury to nationals of another State or to the marine environment.

The Flag State and the other State shall co-operate in the conduct of any inquiry held by that other State into such marine casualty or incident of investigation.

It must be noted that whilst the registration of a ship in a State becomes obligatory under the rule of International Law, the rules and conditions subject to which a ship is registered in a State are governed by the Natio-

nal Merchant Shipping Law of that State. Along with the main act subsidiary legislation is often also enacted to deal with some specific areas. The main Shipping Act generally contains the essential primary provisions relating to

- (a) qualifications of ownership
- (b) obligation to register
- (c) procedure for registration
- (d) certificate of registry
- (e) transfers and transmissions
- (f) mortgages
- (g) name of ship
- (h) registration of alteration and registration anew
- (i) national character and Flag, and
- (j) attendant miscellaneous matters.

1.3. The Registration Procedure

It could perhaps now be useful to show briefly how a registration is effected. Of course the actual details and practice will vary from administration to administration but there are certain basic steps which will be followed and these will be discussed.

The owner normally submits an application to the selected Maritime Administration which may be written or oral. Usually the Merchant Shipping Act specifies who may or may not be considered as owners of their vessels and similarly specifications as to what they define as ships and which classes of vessel may be registered. Provided the owner has satisfied the set prerequisites he is then asked to provide documentation related to the registration of the ship. This documentation includes

the following:

- (a) Declaration of Ownership;
- (b) Bill of Sale;
- (c) The Ships Certificates - Builders, Tonnage measurement etc.;
- (d) Details of any outstanding mortgages on the vessel;
and
- (e) Deletion Certificate.

After the above and other documents have been submitted and accepted by the Registrar, the important particulars are accurately transferred to the Register. These particulars include the ships specifications, details of her ownership, name of ship etc. It is often the practice to charge a registration fee based on the ships tonnage. Details of mortgages outstanding on ships are considered important and whilst these details are often entered on the Register, sometimes a separate register is maintained for mortgages. The ship is then given an official number and a radio call sign and its certificate of Registry is made out and delivered to the owner. This certificate contains important details necessary for the identification of the ship and thus in a sense becomes the passport of the ship.

1.4. Types of Registries and Their Development

There are basically two main types of registries. Normal and Open registries. 3* Although other differences exist the basic difference is that the open registries do not insist on strict conditions of registration and indeed often grant registration on relatively easy terms. Normal registries tend to stipulate that their ships must

be owned by their respective nationals or at least with majority participation by their nationals whilst open registries do not impose such an obligation.

In 1958 the Maritime Transport Committee 4* of the Organisation For European Economic Cooperation defined open Registries as:

"The Flags of countries such as Panama, Liberia, Honduras and Costa Rica whose flags allow and indeed, make it easy for ships owned by foreign nationals or companies to fly these Flags. This is in contrast to the practice in the maritime countries (and in many others) where the right to fly the national flag is subject to stringent conditions and involves far reaching obligations."

The Rochdale Report 5* gave the following definition of the Flags of Convenience.

- "(1) The country of registry allows ownership and/or control of its merchant vessels by non citizens;
- (2) Access to the registry is easy. A ship may usually be registered at a consul's office abroad. Equally important, transfer from the registry at the owners option is not restricted;
- (3) Taxes on the income from the ships are not levied locally or are low. A registry fee and an annual fee, based on tonnage, are normally the only charges made. A guarantee or acceptable understanding regarding future freedom from taxation may also be given;
- (4) The country of registry is a small power with no

national requirement under any foreseeable circumstances for all the shipping registered, but receipts from very small charges on a large tonnage may produce a substantial effect on its national income and balance of payments;

- (5) Manning of ships by non-nationals is freely permitted; and
- (6) The country of registry has neither the power nor the administrative machinery effectively to impose any government or international regulations; nor has the country the wish or the power to control the companies themselves.

One or more of these features may be observable in the policies or circumstances of many maritime countries: it is only for Flags of Convenience countries that all apply and it is only they which effectively have no possibility of imposing taxation on shipping in the future."

Although it is considered that the Rochdale Report went too far in assuming that the six features identified were found in Flags of Convenience, it still is a classic work and an invaluable starting point in understanding them.

The Polytechnic of Central London 6* has developed a very useful definition based on the functions of open registries:

" A Flag of Convenience is the Flag of a State whose government sees registration not as a procedure necessary in order to impose sovereignty and hence control over

its shipping but as a service which can be sold to foreign shipowners wishing to escape the fiscal or other consequences of registration under their own flags.

What is significant about open registries is that for a number of reasons which will be discussed later though they are few in number, their tonnage has shown a steady growth over the years. As shown at Table 1.1. the FOC fleet as a percentage of world shipping has grown from 1.2% in 1939 to 26.8% in 1983.

Table 1.1
FOC fleet as a percentage of World Shipping Vessels
over 100 GRT

Year	%
1939	1.2
1948	3.8
1950	4.9
1955	6.6
1960	12.4
1965	14.3
1970	18.1
1975	25.9
1980	27.3
1981	26.6
1982	26.7
1983	26.8

World FOC Fleet, 1939-83

Year	Liberia		Panama		Honduras		Costa Rica		Lebanon		Cyprus		Somalia		Singapore		FOC Total	World Total	FOC as % of world tonnage
	Ships	Mil GRT	Ships	Mil GRT	Ships	Mil GRT	Ships	Mil GRT	Ships	Mil GRT	Ships	Mil GRT	Ships	Mil GRT	Ships	Mil GRT	Mil GRT	Mil GRT	
1939	—	—	159	0.72	32	0.06											0.80	69.44	1.2
1947	—	—	372	1.71	78	0.28											1.99	—	—
1948	—	—	518	2.72	93	0.32											3.04	80.29	3.8
1949	5	0.05	536	3.02	123	0.41											3.47	82.57	4.2
1950	22	0.24	573	3.36	142	0.52											4.12	84.58	4.9
1951	69	0.59	607	3.61	152	0.51											4.71	87.24	5.4
1952	105	0.90	606	3.74	145	0.47											5.11	90.18	5.7
1953	153	1.43	593	3.91	146	0.47	50	0.15									5.96	93.35	6.4
1954	245	2.38	595	4.09	130	0.44	70	0.20									7.11	97.42	7.3
1955	436	4.00	555	3.92	117	0.43	114	0.34									8.69	100.57	6.6
1956	582	5.58	556	3.92	106	0.39	152	0.51									10.40	105.20	9.9
1957	743	7.47	580	4.13	94	0.37	152	0.52									12.49	110.27	11.3
1958	975	10.08	602	4.26	89	0.34	144	0.51									15.27	118.03	12.9
1959	1085	11.94	639	4.58	78	0.20	91	0.29									17.01	124.94	13.6
1960	977	11.28	607	4.23	59	0.15	44	0.09	74	0.26							16.01	129.77	12.4
1961	903	10.93	601	4.05	58	0.12			131	0.55							15.65	135.96	11.5
1962	853	10.57	592	3.85	54	0.11			164	0.75							15.28	139.98	10.9
1963	893	11.39	619	3.89	49	0.10			190	0.91							16.29	145.86	11.2
1964	1117	14.55	691	4.27	46	0.09			174	0.85							19.76	153.00	12.9
1965	1287	17.54	692	4.46	47	0.08			157	0.78							22.86	160.39	14.3
1966	1436	20.60	702	4.54	43	0.07			149	0.74	35	0.18					26.13	171.13	15.3
1967	1513	22.60	757	4.76	45	0.07			139	0.60	60	0.36					28.39	182.10	15.6
1968	1613	25.72	798	5.10	45	0.07			122	0.44	109	0.65	15	0.06	73	0.13	32.17	195.15	16.5
1969	1731	29.22	823	5.37	51	0.07			95	0.30	134	0.77	58	0.20	112	0.23	36.25	211.66	17.1
1970	1869	33.30	886	5.64	52	0.06			79	0.18	207	1.14	79	0.37	153	0.42	42.11	227.49	18.1
1971	2060	38.55	1031	6.26	54	0.07			65	0.13	277	1.50	109	0.59	185	0.58	47.68	247.20	19.3
1972	2234	44.44	1337	7.79	58	0.07			70	0.12	394	2.01	148	0.87	281	0.87	56.17	268.34	20.9
1973	2289	49.90	1692	9.57	57	0.07			81	0.12	589	2.94	239	1.69	387	2.00	66.29	289.93	22.9
1974	2332	55.32	1962	11.00	56	0.07			88	0.12	722	3.39	276	1.92	511	2.88	74.70	311.32	24.0
1975	2520	65.82	2418	13.67	60	0.07	14	0.006	123	0.17	735	3.22	273	1.81	610	3.89	88.66	342.16	25.9
1976	2600	73.48	2680	15.63	57	0.07	15	0.006	136	0.21	765	3.11	255	1.79	722	5.48	99.78	372.00	26.8
1977	2617	79.98	3267	19.46	63	0.10	14	0.007	163	0.23	800	2.79	31	0.16	872	6.79	109.52	393.68	27.8
1978	2523	80.19	3640	20.75	70	0.13	19	0.01	189	0.28	793	2.60	19	0.07	954	7.49	111.52	406.00	27.5
1979	2466	81.53	3803	22.32	99	0.19	25	0.02	185	0.26	762	2.36	15	0.05	1031	7.87	114.60	413.02	27.7
1980	2401	80.29	4090	24.19	124	0.21	26	0.02	203	0.27	688	2.09	22	0.05	988	7.66	114.78	419.91	27.3
1981	2281	74.91	4461	27.66	143	0.20	27	0.02	230	0.32	588	1.82	21	0.04	828	6.89	111.86	420.83	26.6
1982	2189	70.72	5032	32.60	172	0.23	27	0.02	240	0.37	557	2.15	22	0.02	849	7.18	113.29	424.74	26.7
1983	2062	67.56	5316	34.67	191	0.22	27	0.02	260	0.46	593	3.45	25	0.02	855	7.01	113.41	422.59	26.8

WORLD FOC FLEET 1939-1983

Table 1.2 7*

1.5. Reasons for a Country Wishing to Develop a Registry

When one speaks of developing a registry one is referring to the development of an open registry as opposed to a normal one, in the context of this paper. Basically, some nations try to promote the growth of their own registries for economic reasons. The main income to these registries comes from the registration and annual fees. The registration fee is based on the tonnage of the vessel. In the usual pattern, the annual fees are used to offset the costs of operation of the registry, and the fee for initial registration plus the annual tonnage tax becomes a part of the general revenue of the flag state. Therefore it is quite apparent that the more ships it has on its register, the greater will be the income from this source. And it must be noted that the income from such activities can be quite considerable in a large registry. As shown by Table 1.3 8* the Liberian Registry earned USD17.3 m during 1984. Whilst that registry is calculated to have earned its country over USD249.8 m since 1951.

Table 1.3
Net Earning from Liberia's Registry (1951-1984)
in Millions of US Dollars

Year	Initial Registration fees & tonnage tax	Annual tonnage tax	Addit'l Registration fees and tonnage tax	Change of name fees	Total
1951	--	--	--	--	.2
1952	--	--	--	--	.3
1953	--	--	--	--	.5
1954	--	--	--	--	.5
1955	--	--	--	--	.8
1956	1.1	.2	.006	.0007	1.3
1957	1.7	.3	.037	.007	2.0
1958	1.2	.5	.029	.002	1.7
1959	1.0	.5	.008	.003	1.5
1960	.6	.5	.014	.003	1.1
1961	.5	.5	.066	.004	1.0
1962	.4	.5	.037	.001	.9
1963	1.5	.5	.057	.005	2.1
1964	2.1	.5	.082	.007	2.7
1965	2.7	.7	.150	.007	3.5
1966	1.6	.8	.079	.007	2.5
1967	2.4	1.0	.096	.006	3.4
1968	2.5	1.1	.062	.007	3.6
1969	3.0	1.2	.036	.006	4.2
1970	3.6	1.3	.051	.007	5.0
1971	4.5	1.6	.090	.008	6.1
1972	5.3	1.8	.103	.009	7.2
1973	6.4	2.1	.019	.013	8.6
1974	6.9	2.4	.095	.009	9.4
1975	10.6	5.0	.057	.008	15.6
1976	9.5	4.3	.077	.008	13.9
1977	7.3	3.9	.056	.007	11.2
1978	6.0	4.6	.340	.008	11.0
1979	5.2	4.8	.198	.011	10.2
1980	3.1	4.0	.308	.009	7.4
1981	3.9	13.6	.301	.008	17.8
1982	3.7	14.4	.341	.011	18.5
1983	3.7	14.6	.111	.015	18.4
1984	3.9	13.4	(.045)	.018	17.3
Total in million US dollars					249.8

To the relatively small economies of developing countries such an income is indeed considerable. Apart from the income which a registry brings it also is thought to provide employment opportunities for local seafarers. It is admitted however, that in practice this has not really been a major benefit for most such Flags. Still the opportunity to have some of its seafarers employed, however small the number might be, represents on the one hand additional income to the country in the form of seafarers wages and on the other the acquisition of the expertise and experience in seafaring. This second benefit could be useful should the country some time in the future develop its own merchant fleet.

1.6. Apparent Disadvantages of an Open Registry

The following apparent disadvantages of an open registry have been identified.^{9*}

- "1) Alleged absence of "genuine link" between the ship and the Flag State;
- 2) Apparent inability of Flag State to exercise proper and direct "control" over its ships particularly those which do not regularly call at ports of the Flag State. On the other hand "Port State Control" exercised by other countries over such ships, can prove to be very embarrassing to the Flag State and can also be more expensive to the shipowners concerned in the long run, resulting even in change in country of Registry of the ships. In this connection, it may also be borne in mind that there is a marked tendency to treat ships of Flags of Convenience as "suspect" as regards maritime safety stan-

dards;

- 3) Likely difficulty in realising the anticipated fees since the real principals (beneficial owners) are not in the Flag State;
- 4) Apparent lack of credibility as a responsible maritime nation;
- 5) Alleged inability to ratify and implement international maritime conventions expeditiously;
- 6) Likely to attract criticism in international fora; and
- 7) Likely to be liable for trade union action by International Trade Union Organisations.

1.7. Brief Conclusion

The Registration generally accords nationality. This results in the ship being accorded certain benefits whilst at the same time being subjected to some obligations. Registration has its basis in International Law. Over the years two main types of registries have been in existence. So called Normal Registries and Flags of Convenience. Over the years the proportion of the open registry share of the world tonnage has been growing. It has also been shown that although there are certain benefits which accrue to a country having an open registry, this type of registry also has its disadvantages.

2.0. Factors Which Promote the Development of a Port of ----- Registry -----

2.1. Introduction -----

Over the years, shipowners have had a number of different motivations for using foreign flags and open registries. These reasons included better trading and fishing opportunities, avoidance of capture and requisition in time of war, and the avoidance of laws prohibiting the sale of alcoholic beverages on board passenger ships. However it was between 1920 and 1930 that a number of US shipowners switched to the Panamanian and Honduran Registries in order to employ cheaper shipboard labour. This was indeed the real birth of FOCs as we know them today. In this chapter, one is not examining these historical motivations; instead one is seeking to identify those factors which tend to make open registries attractive to shipowners. Indeed, the factors to be identified are seen by the author as prerequisites for the development of a port of registry, today.

2.2. Economic, Low or No Taxation, Competitive Fees -----

Generally speaking, shipowners are constantly seeking ways of maximising their profits. Often when operating in their own country their shipping income is subject to taxation, the level of taxation often varying directly with the amount of income earned. This has led shipowners to register in countries such as Bermuda and The Bahamas which are virtual tax havens. According to Metaxis "10* shipowners using FOCs are seeking "to avoid taxation and fiscal controls, including double taxation in the case of joint ventures, company revenue

or profit taxes, sales taxes, registration and deregistration fees etc." It is much easier for a Flag to offer liberal tax incentives to a shipping company, if that Flag already has such a structure in place for its onshore companies. If on the other hand the Flag in operation is a developing or other State, which is very dependent on the revenue it gets from taxation, then such State may have to develop a special tax provisions to offer such concessions to shipping.

Registration fees are also seen by many as a competitive factor of a Flag of registry. The Bermudan government has recently passed legislation for what it considers to be "new competitive shipping fees" 11* Under the new proposals both the initial registration fee and annual tonnage dues are to be levied on a sliding scale in three categories. The idea is that larger ships will pay comparatively lesser fees. The new fees are in fact seen by the Bermudan Authorities as being very attractive for owners of large vessels. It must be cautioned however that though competitive fees may sometimes be a necessary precondition for the development of a Flag of registry, it can, by no means, be considered a sufficient condition.

2.3. Political, Stability of Government

The political climate of many nations, is today characterised by instability. Instead of the traditionally peaceful election method, coup's d'etat and other military actions are increasingly being used to change governments. Often when such a change occurs, assets such as ships may be nationalised or expropriated in some other way. This consideration must have some inf-

fluence on a shipowner when deciding where to register his ship or ships. A ship, even at today's depressed prices represents a considerable financial investment and the shipowner will wish to take all possible precautions to minimise the risk to his investments. There was one such coup d'etat in Liberia in April 1980 and although the Commissioner for Maritime Affairs remained in office and gave assurances that there would be no changes in maritime policy, there was however, immediate loss of ships from the registry particularly of Greek owners, switching back to the Greek flag. Just prior to the coup tonnage fee increases had been planned and these went ahead. In addition to this the Liberian registry refused to register vessels which were more than twenty years old. The figures speak for themselves. In 1979 the Liberian fleet totalled 81,528,000 tons and by mid 1982 this had fallen to 70,718,000 tons. 12* Whilst there were other factors that influenced the decline in the Liberian fleet between 1979 and 1982, the period of political upheaval and instability certainly played a major part.

The existence of repatriation agreements, particularly in time of war, would also be of advantage to a flag State in attracting vessels.

A final political factor which could have some influence on the development of registry is the existence of a reasonably neutral political policy vis-a-vis other countries. In other words, good international relations. The benefit of such is seen particularly where ships are arrested and the government's assistance is sought in securing the release of the ship. Indeed between 1939 and 1941, 13* with the encouragement of the US govern-

ment, a number of that country's shipowners are reported to have switched to the Panamanian registry in order to assist the allies without violating the U.S. Neutrality Laws. European shipowners also switched to the Panamanian registry to avoid wartime requisitioning of their vessel.

2.4. Legal/Administrative

The days when a flag of registry could exist and grow with "neither the power nor the administrative machinery to effectively impose any government on international regulations" 14* are fast becoming a thing of the past. Today's registry must have a maritime administration that can effectively and efficiently carry out the customary tasks of a registry such as registrations and deregistrations, inspections, certification etc. As was mentioned earlier the apparent inability of a Flag State to exercise control over its ships can lead to embarrassment for the Flag State when its ships are subjected to Port State Control. The detentions and other actions taken by Port State Control Authorities can be very expensive to the shipowners in the long run, sometimes resulting in a change of Flag. From the author's own observations in a country which exercises Port State Control it was seen that ships of most Flags of Convenience, perhaps with the exception of Liberia, are treated as "suspect". It is therefore important for a flag of registry to have adequate shipping legislation giving its maritime authorities full authority to carry out their respective functions. The shipping legislation should also be compatible with other legislation in the country, which may influence it. An example of such other legislation could be the Companies Act particular-

ly where the flag is granting tax and other concessions to its FOC shipping.

The Flag State should also develop the kind of administrative machinery which permits ease of entry and exit onto and from the register. Initially registration functions could be performed also by consular officers abroad but in the case of large registries it may be necessary to establish registration offices abroad. Particularly near to the major trading centers of the world. In the case of the Liberian Register they have established a central register for ships in the Office of the Deputy Commissioner of Maritime Affairs in New York, and regional offices in London and Hongkong to handle registration as well as safety matters.

2.5. Social (Flexible Regulations Concerning Manning)

" One of the main attractions of open registries is the freedom of choice over nationality of crew and freedom from national wage agreements. Crewing is an area where considerable savings can be made by switching to a Flag of Convenience". 15*

One is looking at the question of manning from two points of view. Regulations permitting manning by non-nationals, and manning scales which take full account of the technological advances in shipping. The shipowner, naturally, is looking for the best available labour at the cheapest cost. The flag of registry may not be able to provide such and one of the attractions of FOCs has been the fact that they allow manning of their vessels at least in the majority by non nationals thus giving the shipowner a certain amount of freedom in crewing his

vessel. On the other side "reduction in crew size is seen by many as well overdue, given technological development and automation of functions." 16* Flag States in general and FOCs in particular therefore have to ensure that manning scales are set or, in the case of most FOC's, not set at all for ratings so as to ensure safe operation of the ship in accordance with guidelines set particularly by international conventions whilst at the same time not forcing the shipowners to carry more crew than necessary. In a study on the competitive position of the Dutch fleet, 17* the manning scale was identified as one of the factors having an adverse effect on the competitive position of the Dutch merchant fleet vis-a-vis other fleets.

2.6. Other

A final factor which has been identified, particularly in today's shipping context as having a positive effect on the growth of a flag of registry is the provision of security of mortgages, loans etc. The practice is that today very few shipowners are in a position to totally finance a vessel themselves and often they have to seek loans and mortgages from public and other lending institutions. Often this financing is only granted upon the provision of some guarantee that the mortgagee will be secured. That is why some registries (notably Liberia) have extensive legislation giving security to mortgages etc. An instrument of international law which deals with this issue is the International Convention on Mortgages and Maritime Liens, 1967. Though not yet in force, it provides a useful model.

2.7. Brief Conclusion

There are a number of factors which do have an influence on the development of FOCs. Whilst the presence of these characteristics do not necessarily guarantee the development of a port of registry, some or all of them are found in most of the successful FOCs. The factors identified are low (or no) taxation, competitive fees, political stability, a proper legal/administrative framework, flexible manning regulations and the provision of security for assets.

3.0. The International Attitude to Flags of Convenience

3.1. Introduction

" In many of the traditional maritime powers there was hostility towards Flags of Convenience from their early days until the late 1950s and the 1960s. Now views vary from qualified support to rather reserved opposition".18*

3.2. The International Transport Workers Federation (ITF)

The International Transport Workers Federation was founded in 1896 and is an international trade union organisation covering all modes of transportation. It has a very strong interest in shipping and has created a special seafarers section for the promotion of fair practices in the maritime industry. The section is concerned with countering the apparent threat posed to seafarers safety and social conditions posed by the operation of vessels under Flags of Convenience.

Early ITF policy concentrated on attempting to prevent the use of Flags of Convenience. This gradually developed into a policy based on improving the conditions for crews on open registry vessels, through collective wage agreements and other negotiations. It is now working to:

- "(a) secure proper terms and conditions of employment for seafarers and Flag of Convenience ships, and
- (b) to secure the ultimate phasing out of Flags of Convenience shipping and the establishment of a genuine link between a ship and its Flag." 19*

The ITF recognises that the phasing out of FOC's can only be done by governments at the international level, but has pledged to "take certain measures to curb the worst excesses of the Flag of Convenience phenomenon".20* This according to the ITF involves the enforcement of currently agreed international minimum standards for shipping, both in terms of technical safety considerations and in terms of the protection of seafarers on ships flying any Flag which enter ports.

One now proposes to trace the development of ITF's interest in the FOC issue. The real expansion of the FOC's occurred after the Second World War when a large number of the wartime liberty ships were sold and registered under the Panamanian, and later the Honduran flags. Many of these ships had a number of deficiencies and the owners at that time apparently showed little interest in maintaining them. Substandard conditions of safety and wages amongst other inadequacies attracted the attention of many seafarers' trade unions. This concern resulted in a resolution adopted in the congress of the ITF in 1948 stating its intolerance to the threat to "seafarers conditions everywhere" and calling for an international boycott, on a date to be agreed, of Panamanian and Honduran ships. This boycott to be applied by both seafarers and dockers.

Prior to deciding on the date for the proposed boycott, the ITF tried to publicise the issue particularly through the International Labour Organisation (ILO). The ILO carried out an investigation of conditions on board Panamanian vessels and found many of the ITF's allegations to be justified.

In 1950 the ITF Congress adopted a recommendation to concentrate boycott action against those ships " on which a defined minimum standard acceptable to the ITF was not applied and to organise disorganised seafarers under the auspices of the ITF". This was indeed the beginning of the Special Seafarers Department, with direct individual membership.

Over the next few years the Number and tonnage of FOC registries continued to increase, reaching over 10% of world tonnage by 1957. In 1958 the ILO issued recommendations No 107 ("The Engagement of Seafarers for Service in Vessels Registered in a Foreign Country") and No 108 (" Social Conditions and Safety of Seafarers in Relation to Registration of Ships").

The ITF (thus supported by ILO) organised a four-day world wide boycott of FOC shipping, and during the course of that period over 300 ships were stopped for varying lengths of time. It is thought by the ITF that the boycott was instrumental in persuading some shipowners not to register under FOC's, and the FOC tonnage actually declined from 13.6% of the world total in 1959 to 10.9% in 1962.

From 1964 the ITF accepted the right of the Greek Seafarers Federation to organise Greek owned and manned FOC ships at a time when the majority of FOC shipping was either Greek or American beneficially owned. The Greek coup in 1967 and subsequent military interference with the trade unions was cited by the ITF as the reason for their suspension from this organisation in 1968.

The ITF Congress in 1971 agreed to intensify its campaign

against FOC shipping because of its continued growth, increased public interest following the wreck of the "Torrey Canyon" in 1967 and a number of casualties in the English Channel in 1971.

The campaign of the ITF continued and grew throughout the 1970s whilst the Special Seafarers Section developed the ITF Collective Agreement. By 1981 over 25% of the ships in the FOC fleet were covered by agreements signed with the ITF.

This agreement basically covers seamen on vessels not covered by national wage agreements and seeks to provide these seamen with basic minimum conditions of employment. Its implementation usually depends on complaints about conditions of employment and living on board, being made by the crews of FOC vessels. These complaints are first made to local unions in a port and the local unions often give their support by threatening a boycott of the vessel unless the conditions of the ITF agreement are followed by the owners. Such agreement leads to the vessel being issued with the "Blue Certificate" of ITF approval exempting the vessel from further threatened boycotts or blackings in other ports. Important matters covered by the ITF Collective Agreement are working hours, overtime rates, manning, leave, sickpay, compensation for loss of life and for disability, repatriation, standards of food, accommodation etc, termination of employment, membership fees and wages.

The ITF-set conditions are generally of a high standard; for example, their wage scale for worldwide shipping operations is based on a "basket" of Western European national payscales and is updated from time to time.

One major contradiction seems to exist so far in this system. It covers seamen employed on FOC vessels but not seamen employed on their national ships. For example low wages for seamen employed on their national ships appear to be accepted whilst if seamen are paid similar wages on FOC vessels this is not accepted. Thus it can be suggested that the ITF is engaged in phasing out open registries by eroding one of their main attractions, namely low crew costs.

3.3. The United Nations Conference on Trade and Development (UNCTAD)

The United Nations Conference on Trade and Development (UNCTAD) was formally established as an organ of the United Nations in 1964. It was specifically charged with responsibility for consideration of maritime economic and political policy issues and began its campaign against FOCs in the early 1970s. In response to a resolution of the Committee on Shipping in 1974 the UNCTAD secretariat in 1976 sought the views of its members on the question of FOC's. In 1977 the secretariat published a report on what it identified as economic consequences of open registries, suggesting that adverse consequences flowed from lack of an economic "genuine link" ^{21*} between the vessels and the Flag States. The phrase "genuine link" was first used in the 1958 Geneva Convention on the High Seas and was later incorporated into the 1982 Law of the Sea Convention. According to Philip Loree the term genuine link as used in the two above-cited conventions was never intended to impose economic or nationality requirements. Fortunately UNCTAD has given some definition to this term and in its view should include the following elements:

- (a) The vessel or company should be beneficially owned in substantial part by the Flag State or its nationals;
- (b) The business and effective management by the beneficial ownership should be located in the Flag State;
- (c) The principal officers of the owning company should be nationals of the Flag State;
- (d) Financial control should be exercised by the Flag State and profits from shipping should be subject to income taxation in the Flag State; and
- (e) The Flag State should assume and carry out full and regular control over standards of its vessels and the qualifications and employment of the crew.

The Committee on Shipping, in response to the secretariat report, requested that an ad-hoc intergovernmental working group of representatives of 44 UNCTAD member States be convened in 1978 to review the economic consequences of the existence or lack of a genuine link between vessel and Flag of registry, and to report thereon.

This ad-hoc working group met in February 1978 and adopted a resolution which concluded inter alia that "the expansion of open registry fleets has adversely affected the development and competitiveness of fleets of countries which do not offer open registry facilities, including those of developing countries".

In September 1979, UNCTAD published two papers entitled "The Repercussions of Phasing Out Open Registries", and

"Legal Mechanisms for Regulating the Operations of Open Registry Fleets".

The former report recommended that if there were no genuine link between a ship and its flag, there should be a gradual tightening up of the conditions of registration. The result was to be the complete phasing out of the FOC's over a ten year period. It was then anticipated that the owners using those flags would be forced to take one of the following alternatives:

- (a) repatriate tonnage to where the link is; or
- (b) establish a genuine link with the existing open registry;
- (c) transfer to a developed country with reasonably low wage levels; or
- (d) transfer to a developing country; or
- (e) cease to invest in shipping.

The report further suggested that high labour costs in the home countries of beneficial owners would prevent the repatriation of tonnage to its link from being a significant outcome. Genuine links with present open registries could only occur within the constraints of these countries' available labour and capital, and it was thought that transfer to flags such as the UK would occur but would also be restricted by the limits of the available labour force. Somehow, the report concluded, the major portion of tonnage from the phased-out open registries would flow to developing countries. This would be brought about by the need for low crew costs and also to satisfy the demands of developing countries for an increasing participation in the carriage of bulk natural resource cargoes.

Some of the repercussions of phasing out identified by the UNCTAD Secretariat were:

- (a) that the Flags of Convenience countries would lose an insignificant amount of revenue, with little effect on their balance of payments;
- (b) national shipping firms in developing countries would have to declare earnings but would experience a reduction in crew costs from ITF levels to the level in the labour supplying countries; and
- (c) benefits to developing countries would be inflow of capital, increased employment possibilities, industrial diversification and possibly an improved balance of payments situation.

The final paragraph of the report states that:

"As far as developing countries are concerned a decision to take no action would severely hamper their chances of ever expanding their bulk fleets in the future. Labour supplying countries would be confined, for the future, to their present degrading role of mere suppliers of crews for foreign shipowners, while the labour unions would undoubtedly interpret such a decision as an abdication of jurisdictional powers by governments in the field on international shipping." 22*

The Report, on the matter of legal mechanisms for regulating the operations of the open registries during the phasing out period, suggests that this could take three forms.

The first feasible alternative would be for a resolution to be adopted by governments to take action to phase out

open registries. This would be purely recommendatory. Open registry States would be called upon to gradually increase requirements for equity participation and employment of nationals. Operators in other countries would be restrained from using such registers and all governments would refrain from establishing new registers. Monitoring would be carried out by UNCTAD.

Alternatively, a resolution under which States would agree to enact national legislation or regulation to effect the phasing out of open registries could be adopted. Measures to be taken by host countries, i.e., those operating open registries would attempt to ensure:

- (a) equity participation by nationals in all vessels, reaching perhaps thirty percent over a decade;
- (b) according to availability, supplying nationals as seafarers so that over a ten year period half the crew would be nationals of the flag state;
- (c) increased vessel inspections;
- (d) rejection of vessels over 15 years old from initial registration unless there is 50 percent national ownership; and
- (e) introduction of rules demanding disclosure of beneficial ownership.

Home countries would restrain nationals from operating under foreign flags unless the foreign country shares beneficial ownership and supplies labour. Labour supplying countries would attempt to attract investment to their own flags and resist crews being supplied to foreign vessels under open registries, insisting that if their labour is needed the vessel should be registered with them.

The Report considered that the most logical method of tackling the problem would be an international agreement in the form of a convention. This would cover such areas as minimum degree of beneficial ownership, employment of nationals and records. Its major practical disadvantage would be time, and it was anticipated that eight years could elapse before action was initiated.

These reports were sanctioned by a resolution adopted by majority vote at an UNCTAD meeting in Manila, from which whilst group D abstained. 23* The UNCTAD V meeting (as it was known) revealed that UNCTAD was not only calling for the phasing out of open registries but also for the redistribution of world shipping tonnage through a program of cargo sharing.

In January 1980 UNCTAD's Shipping Committee held a special meeting to deal with the phasing out of open registries and even though there was a sharp attack on this proposal by some countries, UNCTAD issued a press release to the effect that "consensus" had been reached on the necessity to take action on phasing out open registries.

In September 1980, when the Committee on Shipping again considered this issue, the phasing out proposal was attacked as before.

April 1981 saw the publication by the Secretariat of a report aimed at open registries, claiming inter alia ----- that the vessels were unsafe, that their owners could not be identified, and that Flag and Port State jurisdiction could not be enforced over them. This report led to a special session of the Committee on Shipping in May/June of 1981. There was a clear division between the world's

industrialised nations (group B) and Liberia and Panama on the one hand and the Soviet Bloc (group D) and the Group of 77 (excepting the open registry nations) on the other. This division arose over the issue of what to do regarding open registries. The anti-open registry forces demanded a vote on a resolution recommending that open registries be "gradually and progressively transformed into normal registries" and that an Intergovernmental Preparatory Group (IPG) be established within UNCTAD to work out details for convening a conference of Plenipotentiaries which would ultimately draft a convention establishing specific rules relating to the registration of ships. The resolution was passed with 49 nations in favour, 18 opposing, 3 abstaining and 1 refusing to vote at all.

The United States, Liberia and Panama boycotted the two IPG meetings that were held during 1982.

The work of UNCTAD continued steadily until the final session of the diplomatic conference in February 1986 where a Convention on Conditions for Registration of Ships was ultimately produced. The salient articles of it will now be discussed. The first four articles are of general interest only and deal with the objectives of the Convention, the major one being to strengthen the genuine link between a State and the ships flying its flag. They deal also with definitions, scope of application and general provisions.

Article 5 deals with the National Maritime Administration and states inter alia that

"the Flag State shall have a competent and adequate mari-

time administration which shall be subject to its jurisdiction and control.

This article continues by prescribing that the Flag State should implement applicable international regulations and ensure that its ships also comply with its national laws. The duty is also placed on the national administration to ensure that the ships are periodically surveyed and that the ship carries on board documents proving the right to fly its flag. Of course it must be noted that the Convention gives no precise definition of an adequate maritime administration. However one can observe that the Convention to that point is already calling for a tightening of control by the Flag State over ships flying its Flag.

Article 6 deals with the question of identification and accountability. In this Article parts 2,4,6, and 7 are of particular interest and they state:

- "2) the State of registration shall take such measures as are necessary to ensure that the owner or owners, the operator or operators, or any other person or persons who can be held accountable for the management and operation of ships flying its flag can be easily identified by persons having a legitimate interest in obtaining such information.
- 4) A State should ensure that ships flying its Flag carry documentation including information about the identity of the owner or owners, the operator or operators or the persons accountable for the operations of such ships, and make available such information to Port State Authorities.

- 6) A State shall take measures to ensure that ships it enters on its register of ships have owners or operators who are adequately identifiable for the purpose of ensuring their full accountability.
- 7) A State should ensure that direct contact between owners of ships flying its flag and its government authorities is not restricted.

What the above Article represents is an attempt to increase the identification and accountability of owners and operators of vessels flying their flags. Whether it is unfortunate or not, one of the characteristics of a number of registries (and notably FOC's) is this anonymity of the owners and operators. It is this apparent evil which the Convention seeks to redress.

Article 7 deals with the subject of participation by nationals, which it says should be in the ownership and/or manning of ships. This article does not go into specifics but refers to provisions concerning manning and ownership contained in paragraphs 1 and 2 of Article 8 and 1 to 3 of Article 9, respectively; and states that the Flag State has to comply with either of the two above-cited provisions and may comply with both. So it is now necessary to look at these articles.

Article 8 states:

- (1) subject to the provisions of article 7, the Flag State shall provide in its laws and regulations for the ownership of ships flying its Flag.
- (2) subject to the provisions of article 7, in such laws

and regulations the Flag State shall include appropriate provisions for participation by that State or by its nationals as owners of ships flying its flag or in the ownership of such ships and for the level of such participation. These laws and regulations should be sufficient to permit the Flag State to exercise effectively its jurisdiction and control over ships flying its flag."

It is noted here that although the convention is calling for participation by the State or its nationals, it is quite vague on the extent of such participation and leaves this to a large extent to the discretion of the Flag State. Article 9 states:

- (1) Subject to the provisions of article 7, a State of registration, when implementing this convention, shall observe the principle that a satisfactory part of the complement consisting officers and crew flying its flag be nationals or persons domiciled or lawfully in permanent residence in that State.
- (2) Subject to the provisions of article 7 and in pursuance of the goal set out in paragraph 1 of this article, and in taking necessary measures to this end, the State of registration should have regard to the following:
 - (a) the availability of qualified seafarers within the State of registration;
 - (b) multilateral or bilateral agreements or other types of arrangements valid and enforceable pursuant to the legislation of the State of registration;
 - (c) the sound and economically viable operation of its

ships.

3. The State of registration should implement the provision of paragraph 1 of this article on a ship, company or fleet basis.

The above-quoted part of Article 9 only indicates that the flag should exercise control over the manning of its ships. It is also found to be a bit vague in that it does not say what a "satisfactory part of the officers and crew" is. Article 9 goes on to provide for the training of seafarers in accordance with applicable international rules and standards, the terms and conditions of employment on board and the existence of adequate legal procedures for the settlement of disputes between seafarers and their employers.

Article 10 calls for the shipowning company or subsidiary shipowning company to be established and have its principal place of business within the territory. It further provides that where there is no principal place of business in the State that there should be a representative or management person who shall be a national of the Flag State or be domiciled therein. And further that such person should be fully legally responsible for the ship.

It has been common for shipowners wishing to register under Flags of Convenience to establish shipping companies for this purpose. Often the liability of such companies is limited to their capital, which is frequently little more than the value of the ship itself. In addition it would appear as though shipowners have found few problems in finding nationals of Flag States who are willing to represent and manage their companies. Often,

these services are provided by a firm of lawyers. So in effect it would appear as though this article could have the effect of legitimising a practice which has already been adopted and followed in FOCs.

Article 11 deals with the details which must be entered on the register book and it is submitted that most of this information is already placed on the register books of some Flag States.

Article 12 deals with bareboat charters, 13 with joint ventures, 14 with measures to protect the interests of labour supplying countries and 15 with measures to minimise adverse economic effects. The remaining articles deal with the usual final clauses to be found in a convention such as entry into force, etc. The Convention also provides for a review conference eight years after its entry into force.

To the author, although this Convention is apparently vague it represents a first step towards the normalising of open registries. And it is anticipated that if it comes into force it may be made more stringent particularly at the review conference.

This has already been very sharply criticised. Philip Loree in his paper had this to say about the Convention:

"It is hardly suprising that the convention presently has a very uncertain future in terms of its eventual coming into force. It has already earned the sharp criticism of some international commentators, the vocal opposition of trade unions and the disdain of some shipowner groups. In the opinion of some observers, its entry into force after

ratification by 40 countries representing 25% of the world's merchant tonnage, is not very likely, at least within the next five to ten years." 24*

3.4. Traditional Maritime Countries

According to Bergstrand the General Council of British Shipping (GCBS) a reasonably representative grouping of British shipowners, has argued that if a ship met with the international standards set at IMO and ILO it should not be the subject of discrimination because of its nationality or that of its crew. The GCBS also felt that the consequences to international trade of phasing out Flags of Convenience would be too severe. This would lead to increased operating costs and also adversely effect cross traders.

The OECD countries on the other hand seem to be generally committed to combatting substandard ships but do not see this only as a question of Flag.

The EEC and the European Parliament

In the late seventies the European Parliament was extremely critical of FOC's, stating that they represented a double obstacle to the healthy development of shipping in the community because:

- (a) companies using FOC's can offer lower prices than others because their costs are lower, and
- (b) they represent a constant temptation to the shipping capital of member States to seek these cost advantages by switching to FOC's.

So the problem was seen basically as an economic one. However, the solution which the Parliament suggested, namely the control of ships calling at European ports was a technical one. Thus Port State Control was implemented in 1978 when eight north sea member states signed a "Memorandum of Understanding" in the Hague. It was based primarily on ensuring compliance with ILO Convention 147 and the IMO's, SOLAS and Loadlines Conventions. The work was carried a step further when 13 West European countries signed the Paris Memorandum of Understanding (MOU) on Port State Control in 1980. And today there is a very effectively exercised Port State Control by the parties to the Paris MOU.

Within individual countries around the world there has definitely been a tendency towards the acceptance and recognition of FOC's as an economic reality, and in this respect the author thinks that the examples of France and Norway are worthy of mention, although there are others.

France

The French, according to Bergstrand, 25* have generally taken an anti-FOC stance, and at UNCTAD V in 1979 a government spokesman called for the rapid phasing out of FOC's, agreeing to the studies requested by the group of 77 on legal mechanisms for and the repercussions of phasing them out. In the ensuing years there has been some change in the French position because the French Flag has traditionally been a high-cost one and flagging out to FOCs in the context of today's shipping situation was and still is a very tempting proposition to French shipowners. To counter this threat to their national shipping the French government recently announced plans to estab-

lish a Flag of Convenience in a remote Antarctic colony, the Kerguelen Islands. Under this register the French shipowners would be permitted to use only 25% French crew. It was estimated that under such conditions owners could save up to USD2,000 a day on an 18-man vessel.

Norway

Norway had one of the largest fleets in the world, but owing to the fact that this fleet has increasingly become a high-cost one, there has been a tendency towards flagging out. In 1980 a government appointed committee considered the issue and found that flagging out should be permitted under certain conditions. But by far the most interesting development has been the proposal for the establishment of a separate Norwegian International Shipping Registry which would be established on terms more or less equal to those applying to ships operating under Flags of Convenience.

3.5. Conclusion

There has been a general tendency towards acceptance and even support of FOCs by many traditionally maritime powers; with some of these countries even considering offering FOC facilities themselves. They seem to accept it as an economic reality. On the other hand organisations such as UNCTAD and the ITF have continued in their fight against FOC's. UNCTAD has succeeded in making a convention on conditions for the registration of ships. Even though this convention is vague and not a direct threat to FOC's at the moment, it represents a first step towards achievement of the UNCTAD goal.

4.0. The Present Reality and the Future of FOC's

4.1. introduction

In this chapter one basically takes the points which have been raised in the previous three chapters in an effort to identify the present realities and make some predictions on the future of Flags of Convenience. The order in which these points are given and discussed are in no way intended to be indicative of their relative importance. Also, where necessary, one or two new points have been raised.

4.2. Flags of Convenience an Established Phenomenon

As has been shown previously, FOC's have now been in existence for many years. There have been a wide range of factors which have caused shipowners to use these flags, which have even been at times political. Today however FOC's offer many shipowners from high cost flags a chance to reduce many of their cost items and compete more effectively. The shipping scene has become very competitive with the entry over the years of many newcomers and low cost operators such as the Chinese. According to Metaxas, 24* shipowners have been encouraged to switch to FOC's for the following reasons:

- "1. to avoid taxation and fiscal controls, including double taxation in the case of joint ventures, company revenue or profit taxes, sales taxes, registration and deregistration fees, etc.
2. to avoid national regulation in respect of the terms and conditions of employment of labour. Needless to

say this includes avoidance of nationally agreed levels of crew remuneration, and avoidance of payments to factors of production in the national currency in cases where the currency under consideration is a high value one in the international money markets. In addition (more so in the early stages of the development of the institution, ie. 1945-58 and less so now), it includes avoidance of payments in respect of standard employers' contributions to seamen's pension funds, etc.

3. to avoid political instability and / or the nationalisation risk in the country of origin of the firm and also to avoid political restrictions on the freedom of international trade.
4. to avoid controls (some of which may be of a bureaucratic nature) that limit flexibility in the investment and operation of ships. In other words, what is sought after by using the device and in the case of relatively large concerns establishing business organisations in city-states and other parts of the world is stability, i.e., stable conditions in which the firm can be the sole decision-maker in the use of its scarce resources".

Indications are, that at least for the next few years this type of flag will continue to be used as shipowner from traditional and high-cost flags continue to transfer to them mainly in an effort to improve their competitive position. New FOC's are also expected to emerge as more developing countries, particularly those with scarce resources, attempt to get into the business. Also it is clearly evident that a number of the traditional maritime

countries which previously had and still maintain "normal" registries are increasing their direct and indirect participation in these flags. The Liberian Flag, now the single largest registry, was very much assisted in its early development by the United States of America.

Today it is clearly evident that economic considerations more than any other are the guiding motivation behind shipowners using FOC's with political and social factors playing a less leading role. In simple words, today it is much more cost effective for many shipowners to operate their vessel under FOCs than their national flags. Initially it was observed that governments in a number of the traditional and high-cost maritime countries were more willing to support their shipowners. This was frequently through the grant of direct and indirect subsidies, often to ensure that the national fleet was adequate to service their trade. Now they seem to have accepted that (1) they are using much needed revenues to subsidise vessel operation, which are urgently needed in other areas, and (2) that perhaps the only way for them to have shipping services at the cheapest costs to them, even in terms of balance of payments, would be to allow their shipowners to use cheaper flags. It is therefore suggested that the evolution of FOC's has indeed become a function of economic realities.

4.3. The Nature of FOC's Is Undergoing Some Change

It must be pointed out that even though one is of the opinion the FOC's will be around for some time, their mode of operation has been under constant attack- particularly by UNCTAD and the ITF. As a result some pressure is presently being exerted on FOC's as they now exist. It

is conceded that FOC's have had a particular reputation for allowing the operation of substandard ships and indeed their casualty record is not a favourably impressive one.

As was just mentioned UNCTAD and the ITF have led the international fight against FOC's. UNCTAD, however, being an international body where politics tend to play a significant role has been the less effective of the two. The ITF has had remarkable success, particularly regarding employment conditions on FOC's. UNCTAD has recently managed to prepare a convention on conditions for the registration of ships which, though vague, constitutes a first step towards the normalisation of FOC's. It is thought that should these organisations continue to work in this area, they will continue to nudge Flags of Convenience towards "respectability" and a higher quality of operation. Of course other organisations such as the International Maritime Organisation and the International Labour Organisation have also been instrumental in bringing about an improvement in the standards of FOCs. In all fairness to the two organisations just mentioned, one must state that they have been working towards the improvement of shipping and employment on board ships in general. They have generally not directed their efforts against any particular type of flag. The other international development which is also working towards the improvement of standards of shipping in general is Port State Control. What has happened is that in major trading areas of the world, such as much of Europe and the United States of America, rigorous Port State Control is being exercised. The exercise of this control results in rectification of deficiencies and sometimes even detention of the vessels. The object being to ensure that the vessels

are seaworthy both from technical and other points of view, such as adequate certification of crew.

It is also anticipated largely as a result of concern by coastal states about losses arising from accidents along their coast line, that Port State Control will be exercised in even more areas. What this means is that the sea area within which substandard vessels can continue to operate will become progressively smaller. So the implication of this increasing Port State Control for FOC's, and indeed all registries, is that they will have to improve their safety and other standards. Of course it is anticipated that this process will not be an immediate one but will be more of a long run nature. Safety in the case of shipping often means money. And on the one hand it is suggested that this last mentioned factor because of the costs involved may tend to reduce the cost competitiveness of FOCs. On the other hand it may also mean that new FOC's may have to enter the game at a higher level of competence and technical standards than their predecessors.

4.4. The Development of an FOC can be Part of a Wider ----- Maritime Development Plan -----

As one has tried to show so far, even though Flags of Convenience will continue for some years to come, their future in the long run may well be threatened. Hence it is suggested that the development of an FOC could well be part of a wider maritime development plan. Offering of FOC facilities can be generally described as a service to shipping. Many vessels today, regardless of their flag, often do not call at their home ports frequently. What this means is that a large percentage of shipping today

is buying shipping services such as bunkering in other ports. It is therefore suggested that the development of an FOC could be seen as part of a maritime service industry offering services to international shipping such as the ones which will now be briefly discussed.

1) Brokerage, Building and or Buying: As is generally

known today when shipowners are acquiring tonnage, whether it be a newbuilding or second hand, they customarily use the services of a broker who through expertise and contacts has very good knowledge of these markets. Of course one recognises that success in an area such as brokerage is very dependent on acquiring a good reputation, usually gained through years of operation. Hence for a new brokerage service it will be advantageous and advisable to develop links with an established broker, perhaps through a joint venture arrangement.

2) Insurance Brokerage: This is another service which

could form part of a broad maritime service industry but this area would, perhaps even more than the first type, mean dependence on a good relationship with an established broker at least in the initial stages.

3) Ship chandlery and maintenance: These are other

areas where a large demand exists in shipping. In the case of maintenance one does not necessarily have to think of having a ship-repair yard, but the maintenance can be of a limited or specialised nature.

4) Bunkering: This facility could also be developed

and the chances for success are particularly good where the country in question either has extensive

reserves of petroleum or access to such. In the case of this service it would be essential to offer consistently high quality bunkers and at competitive prices.

The above-cited examples are just a few of the services which a country could offer either alongside FOC facilities or by themselves. And when one realizes that most of the shipowners today are buyers of shipping services in countries other than the Flag State, then one realizes that the potential is great. The development of an FOC also provides an opportunity for a non-traditional maritime nation to have some of its nationals trained in seafaring. This means an opportunity to acquire expertise needed, should that country wish to develop its own merchant fleet.

4.5. Other Considerations

Political: The establishment of an FOC for whatever reasons represents a grave political responsibility of international significance. The country involved may even be placing its international reputation on the line. One immediately cites the predicament of the Bermudan government in mid-1980 when it was faced with an influx of Vietnamese refugees picked up by Bermudan-registered vessels.^{26*} The political implications need therefore to be very carefully considered by a country's maritime administration when deciding whether or not to develop an FOC.

Economic: Today more than before, establishment and operation of a registry means a significant investment. Investment is required for developing the administrative

infrastructure and for development of a proper inspection service. In respect of the latter it is true that the initial stages one could rely on the Classification Societies but this reliance will be expensive and should be more of a short term than a lasting nature. Another cost which should not be overlooked is the flag state assessment by IMO. The contributions to IMO are calculated according to the tonnage on a state's register. And, quite naturally, the greater one's tonnage the higher will be the mandatory contributions to IMO.

The most substantial part of the revenue derived from FOCs comes from registration fees and annual tonnage taxes. Against this total anticipated revenue one must weigh the costs involved in developing the necessary overall infrastructure.

Evidence suggests that FOC's will be around for some time to come even though in time their cost attractiveness may become less evident. As no guarantee can be given towards the continuation of FOC's in their present form, in the very long run the development of an FOC should be part of the development of a maritime service industry.

5.0. The Present Status of Registration in Barbados

5.1. General Description

Barbados, the most easterly of the Caribbean Islands, is found at 13.10 N 59.32 W. It has one port, which is located in the capital, Bridgetown. The island was a British colony for over two hundred years and achieved its independence on 30th November 1966. It has a democratic form of government, very much patterned after the British system. It is a small island of approximately 166 square miles with a population of just over a quarter million people. Not blessed with an abundance of natural resources, Barbados' main sources of income have traditionally been agriculture (it was originally a sugar plantation island) and tourism. The government, in recent years, has been trying to diversify the economy, primarily through industrialisation. An even newer development towards this end has been the attempt to create an offshore industry. 27*

As Barbados was a British colony, it was originally part of the British Registry system. Formerly ships registered in Barbados were British ships, flying the British Flag and being issued British certificates. Indeed, until the entry into force of the Barbadian Shipping Act 1981-19, registration of ships in Barbados was performed under the authority of the United Kingdom Merchant Shipping Acts 1894 to 1965. Therefore when the Barbados Shipping Act entered into force it contained a provision which changed the ships on the register to Barbadian ships whilst at the same time allowing owners of the ships currently on the register a six month period to leave the register if they so desired. Section 345

of the Act reads as follows:

- "(1) All ships that were, immediately before the commencement of Part 1, British ships by virtue of being registered in Barbados under the Merchant Shipping Acts 1894 to 1965, of the United Kingdom shall, on and after that day, be deemed to have been registered under this Act and to be Barbadian ships.
- (2) Notwithstanding subsection (1), the owner of any ship may, at any time within six months after the commencement of Part 1, give written notice of his desire that the ship cease to be a Barbadian ship and upon receipt of that notice the Director shall delete the ship from the register; and the ship thereupon ceases to be a Barbadian ship."

The new Act is indeed a very comprehensive bit of legislation and one of its stated purposes is:

"to encourage and regulate the orderly development of merchant shipping in Barbados and to provide for the qualifying of persons employed in service at sea in Barbadian ships."

The word encourage in the above is important to this

paper, because one of the motivations behind the formulation of the Act was to expand the Barbadian-registered fleet. As will be shown later, with few exceptions, the provisions of the Shipping Act allow for registration of vessels to such an extent that Barbados has in some circles been referred to as a new Flag of Convenience. At present Barbados has only a small registered fleet; there are a total of 72 ships with a total tonnage of

12,633.81 GRT. Barbados cannot be said to be a traditional maritime country. Although one need not go deeply into why this is so, a few words still need to be said in this regard. One of the major reasons lies in the history of the island. As was stated earlier the British, a traditional maritime power, settled in Barbados, brought slaves from Africa to the island and established it as a sugar producing colony. That was the original use to which the island was put, and it was only after slavery had been abolished and the society started to develop from within that there was some deviation from that original purpose. This in part explains why a small island bounded on its eastern side by the Atlantic Ocean and on the west by the Caribbean Sea, has not been a traditional seafaring nation. The seafaring activities of Barbadians have to a large extent been confined to coastal fishing, and it is only comparatively recently that fishing has shown definite signs of expanding beyond our national horizons. Those seamen who in the past joined ocean-going merchant ships particularly of the British fleet, were few and are still few. Table 5.1 shows the number and ranks of Barbadian seamen. 28*

Ranks & Numbers of Barbadian Seamen

Table 5.1

Ranks	Number
Chief Petty Officers	20
Ordinary seamen	148
Chief cooks	24
Cook assistant	14
Second stewards	13
Stewards	52
Merchanics	12
Store keepers	12
Motor men	46
Total	341

In the above Table it can be seen that there are only 341 registered seamen with the majority being ordinary seamen.

5.2. Why Develop Barbados' Registry ?

As has been stated at the outset the type of registry which one is considering in this paper is an FOC. It is therefore indicated that the direct gains which Barbados may derive if it were to expand its registry would be income and employment.

Another result from any employment gained on board ships registered under its Flag would be the acquisition of expertise and experience in seafaring. As stated earlier, Barbados does not have an abundance of natural

resources. Indeed, as is the case of many other developing countries, it has often been said that our greatest resource is our people. In the context of this situation it becomes obvious that one of the answers to the economic growth and development of Barbados will be in concentrating on offering marketable services. It is contended that a Flag of Convenience is one such service. For a country which has been successful in developing a large registry, a significant amount of foreign currency can be realized. Liberia has been one such country. For an economy as small and as fragile as the Barbadian one, such revenue is always welcome. The other direct benefit which Barbados could hope to gain is employment of some of its few seafarers. What this also means, apart from the gains to the economy from wages, is the acquisition of valuable expertise and experience in seafaring. In the long run Barbados may think in terms of engaging actively in shipping through the acquisition of its own merchant fleet. Not to service the national trade alone, which is relatively small and unbalanced, but to get involved in cross trading. Table 5.2 below gives an indication of the level of cargo moving in and out of Barbados. 29*

World FOC Fleet, 1939-83

Year	Liberia		Panama		Honduras		Costa Rica		Lebanon		Cyprus		Somalia		Singapore		FOC Total	World Total	FOC as % of world tonnage
	Ships	Mil GRT	Ships	Mil GRT	Ships	Mil GRT	Ships	Mil GRT	Ships	Mil GRT	Ships	Mil GRT	Ships	Mil GRT	Ships	Mil GRT	Mil GRT	Mil GRT	
1939	-	-	159	0.72	32	0.06											0.80	69.44	1.2
1947	-	-	372	1.71	78	0.28											1.99	-	-
1948	-	-	518	2.72	93	0.32											3.04	80.29	3.8
1949	5	0.05	536	3.02	123	0.41											3.47	82.57	4.2
1950	22	0.24	573	3.36	142	0.52											4.12	84.58	4.9
1951	69	0.59	607	3.61	152	0.51											4.71	87.24	5.4
1952	105	0.90	606	3.74	145	0.47											5.11	90.18	5.7
1953	153	1.43	593	3.91	146	0.47	50	0.15									5.96	93.35	6.4
1954	245	2.38	595	4.09	130	0.44	70	0.20									7.11	97.42	7.3
1955	436	4.00	555	3.92	117	0.43	114	0.34									8.69	100.57	6.6
1956	582	5.58	556	3.92	106	0.39	152	0.51									10.40	105.20	9.9
1957	743	7.47	580	4.13	94	0.37	152	0.52									12.49	110.27	11.3
1958	975	10.08	602	4.26	89	0.34	144	0.51									15.27	118.03	12.9
1959	1085	11.94	639	4.58	78	0.20	91	0.29									17.01	124.94	13.6
1960	977	11.28	607	4.23	59	0.15	44	0.09	74	0.26							16.01	129.77	12.4
1961	903	10.93	601	4.05	58	0.12			131	0.55							15.65	135.96	11.5
1962	853	10.57	592	3.85	54	0.11			164	0.75							15.28	139.98	10.9
1963	893	11.39	619	3.89	49	0.10			190	0.91							16.29	145.86	11.2
1964	1117	14.55	691	4.27	46	0.09			174	0.85							19.76	153.00	12.9
1965	1287	17.54	692	4.46	47	0.08			157	0.78							22.86	160.39	14.3
1966	1436	20.60	702	4.54	43	0.07			149	0.74	35	0.18					26.13	171.13	15.3
1967	1513	22.60	757	4.76	45	0.07			139	0.60	60	0.36					28.39	182.10	15.6
1968	1613	25.72	798	5.10	45	0.07			122	0.44	109	0.65	15	0.06	73	0.13	32.17	195.15	16.5
1969	1731	29.22	823	5.37	51	0.07			95	0.30	134	0.77	58	0.20	112	0.23	36.25	211.66	17.1
1970	1869	33.30	886	5.64	52	0.06			79	0.18	207	1.14	79	0.37	153	0.42	42.11	227.49	18.1
1971	2060	38.55	1031	6.26	54	0.07			65	0.13	277	1.50	109	0.59	185	0.58	47.68	247.20	19.3
1972	2234	44.44	1337	7.79	58	0.07			70	0.12	394	2.01	148	0.87	281	0.87	56.17	268.34	20.9
1973	2289	49.90	1692	9.57	57	0.07			81	0.12	589	2.94	239	1.69	387	2.00	66.29	289.93	22.9
1974	2332	55.32	1962	11.00	56	0.07			88	0.12	722	3.39	276	1.92	511	2.88	74.70	311.32	24.0
1975	2520	65.82	2418	13.67	60	0.07	14	0.006	123	0.17	735	3.22	273	1.81	610	3.89	88.66	342.16	25.9
1976	2600	73.48	2680	15.63	57	0.07	15	0.006	136	0.21	765	3.11	255	1.79	722	5.48	99.78	372.00	26.8
1977	2617	79.98	3267	19.46	63	0.10	14	0.007	163	0.23	800	2.79	31	0.16	872	6.79	109.52	393.68	27.8
1978	2523	80.19	3640	20.75	70	0.13	19	0.01	189	0.28	793	2.60	19	0.07	954	7.49	111.52	406.00	27.5
1979	2466	81.53	3803	22.32	99	0.19	25	0.02	185	0.26	762	2.36	15	0.05	1031	7.87	114.60	413.02	27.7
1980	2401	80.29	4090	24.19	124	0.21	26	0.02	203	0.27	688	2.09	22	0.05	988	7.66	114.78	419.91	27.3
1981	2281	74.91	4461	27.66	143	0.20	27	0.02	230	0.32	588	1.82	21	0.04	828	6.89	111.86	420.83	26.6
1982	2189	70.72	5032	32.60	172	0.23	27	0.02	240	0.37	557	2.15	22	0.02	849	7.18	113.29	424.74	26.7
1983	2062	67.56	5316	34.67	191	0.22	27	0.02	260	0.46	593	3.45	25	0.02	855	7.01	113.41	422.59	26.8

Table 1.2 7*
WORLD FOC FLEET 1939-1983

Cargo Tonnage Moved Through the Bridgetown Port

Table 5.2

Year	Tons of Cargo
1981	707,385
1982	767,392
1983	791,577
1984	681,706
1985	676,516
Average	724,911

For a number of years now Barbados has participated in the operation of a regional shipping line. This participation has been more in terms of capital shareholding and administration, than in actual crewing.

Around the mid-sixties the region operated a passenger/-cargo service and is now operating a cargo service. The regional shipping line, the West Indies Shipping Corporation (WISCO), operates three small general cargo vessels with some container capacity. This shipping operates mainly throughout the island chain. Admittedly this is a small beginning, but it is quite conceivable that as Barbados gains experience, and therefore develops a measure of expertise in seafaring, it may someday become a shipowning nation. The offering of registration facilities will not meet this end by itself, but will certainly contribute to it. It is also considered that the legal, administrative and technical framework which would be a necessary investment for a Flag of Convenience could also be adopted and used for a national

fleet. The same competitive edge which we may give to foreign owned ships sailing under our flag could also be extended to our own national shipping.

However, it is likely that the principal benefit one can foresee Barbados gaining from offering FOC facilities is revenue.

5.3.A Comparative Analysis of the Barbadian Shipping ----- Act ----

This section makes a comparative analysis of key aspects of the Shipping Act. Here the Act is being compared with the Liberian and the Bahamian legislation.^{30*}

Type of Register -----

Barbados -----

Barbados has only one Port of Registry (Bridgetown), and the register is kept at the office of the Director of Maritime Affairs who is also the principal registrar of Barbadian ships. The hours of business are 8.30 am to 4.30 pm Mondays to Fridays. The registry, whilst not having such equipment of its own, has access to telex and other modern communications facilities. Thus it is still able to establish quick and easy contact with foreign registries, shipowners, port authorities, etc. Although to date there are no registration offices outside of Barbados, such functions can be carried out by our consular officers if necessary. Surveying and inspection of ships is presently done on behalf of Barbados by a number of Classification Societies and locally by a government surveyor of ships. This government surveyor

is employed on a part-time basis when services are required.

Bahamas

The Bahamas also has one port of registry, which is Nassau. The ships' register is kept at the Registry of Shipping in Nassau which is also the office of the Director of Maritime Affairs. That individual is also the Registrar of shipping. The registry is usually opened for public business from 9.30 am to 5.30 pm Mondays to Fridays, but special arrangements can be made for the provision of out of hour registration facilities, usually at a charge. The registry has possibilities for telex communications and has established an office in London which offers full registration facilities.

Liberia

Liberia maintains a central register for ships in the Office of the Deputy Commissioner of Maritime Affairs in New York. The office is open for business from 9 am to 5 pm on weekdays and it is possible to make special arrangements with this office to register vessels outside New York and outside of normal office hours where necessary.

The three registries examined all maintain central registers. It is however observed that the Bahamian and Liberian registries have found it necessary to establish additional registration facilities outside of the Flag States. Presumably the locations chosen, namely New York and London, have been selected because of their proximity to major shipping and trading centers. The present

level of registration activity in Barbados does not warrant such initiatives. However this does not mean that Barbados should not try to place herself in position to take advantage of any opportunities which may occur overseas. To this end, the consular officers abroad should be duly designated and given appropriate instructions regarding the execution of the necessary formalities.

Fees

Barbados

A registration fee of \$1.25 per gross register ton for vessels of 5000 gross register tons or less, and \$1.00 per gross register ton for vessels exceeding 5000 grt. The annual fees are equal to ten percent of the prevailing registration fee.

Bahamas

For ships of 5,000 net register tons or less, the present registration fee is \$1.20 per ton or \$600 whichever is greater. Whilst for ships exceeding 5000 nrt or fee of \$1.10 per nrt is payable. The annual fee to be paid in respect of a ship is also ten percent of the initial registration fee plus \$900.

Liberia

The charges for registering a vessel for the first time including first year tonnage tax is \$1.60 per nrt plus additional charges for services and documents. Currently a number of discounts in the registration fee are

available. The annual tonnage tax now \$.40 per net ton. If a vessel is less than 2,200 net tons and is approved for registration it must nevertheless pay fees on the basis of 2,200 net tons.

Of course when one is considering the level of fees which one will charge, one must consider that there are certain costs which will have to be covered by the registry. These costs will include, inter alia, servi-

ces which may be rendered, documentation which must be produced, and contributions to IMO. The last point is mentioned because one has to bear in mind that contributions to IMO vary directly with the tonnage on one's register. The greater the tonnage, the higher ones contribution. So, whilst looking at the level of fees an FOC state must on the one hand try to be competitive, and on the other hand cover the costs directly incurred by the registry. A venture such as this must not be operated at a net loss to the general revenue.

What vessels can be Registered ?

Barbados

According to the Shipping Act, "ship" means any vessel used in navigation and not propelled by oars and a "vessel" includes any ship, boat or other vessel used in navigation and includes every description of lighter, barge or like vessel however propelled. Ships exceeding twenty years of age at the time of their first application for registration are not accepted. The Act also states that:

" A ship qualifies for registration under this part if

- a) it is a pleasure yacht,
- b) it is a fishing-boat registered under the Fishing Industry Act,
- c) at least forty-four of the sixty-four shares 31* in the ship are owned by qualified persons 32*
- d) it is a foreign going ship of 500 gross register tons or more that is used in navigation in foreign going trade and its registration under this part is approved by the Minister; or
- e) it is a home-trade ship of 100 gross register tons or more that is used in navigation of which forty four of the sixty-four shares in the ship are owned by Caricom persons 33* and its registration under this part is approved by the Minister."

Bahamas .

Firstly, it is observed that the Bahamas legislation defines "ship" in a very broad manner. Ships for them include every description of vessel used in navigation and every description of lighter, barge or like vessel however propelled. The definition therefore includes all types of conventional vessels and most other types such as dumbarges, crane barges and oil rigs. Ships of 1,000 tons or more may be registered regardless of the nationality of their owners provided they are seagoing ships engaged in the foreign trade. No ship may be registered which is less than 1,600 net register tons unless she is wholly owned by citizens of Bahamas, or a body corporate established under the laws of Bahamas which has its principal place of business in the Bahamas and which is wholly and beneficially owned by citizens of the Bahamas.

Liberia

The Liberian legislation also has a liberal interpretation of vessels which may be registered. This definition is not restricted to self-propelled vessels but barges, drilling rigs and other seagoing craft can also be registered.

Broadly speaking any seagoing vessel of more than 1,600 net tons engaged in foreign trade may be registered provided it does not exceed twenty years of age.

Yachts or other pleasure craft of 100 tons or more may also be registered and vessels exceeding 20 tons engaged solely in the African coastwise trade.

Liberian Flag vessels, including those foreign going vessels exceeding 1,600 tons may be owned by individuals, corporations, partnerships and associations of individuals. However in the case of vessels exceeding 1,600 tons there are no restrictions as to who may qualify as a "foreign maritime corporation".

In all the above cases it has been found that the respective maritime legislation gives very liberal interpretations of what vessels may be registered. It is also to be noted that there is another and perhaps more important feature. In the case of foreign going vessels, apart from variations in tonnage, all three legislations permit registration of these vessels regardless of the nationality of the owners. In this case the Barbadian legislation is the more liberal of the three, setting the minimum tonnage at 500 gross register tons.

The Barbados Shipping Act is a new and comprehensive one and it is clearly evident that in the aspects discussed it compares favourably with the other two. Also on the question of manning, the Barbados legislation does not prohibit the manning of its vessel by non-nationals.

5.4. The Political Climate

As was indicated earlier in this paper, the political stability of a country can be an important factor when a shipowner is deciding where to register his vessel. This is so largely because the shipowner is trying to minimise the risk of his vessel being confiscated. Also, from the financier's point of view, whether they be banks or otherwise they are also interested in the security of their investments. Fortunately, Barbados has enjoyed a good measure of political stability, particularly from the time of its independence until the present. And this fact would definitely be to its advantage should it attempt to develop its registry even further.

5.5. The Legal and Administrative Framework

The Shipping Act constitutes a very up to date and comprehensive piece of shipping legislation. A full list of its contents are given as Appendix I to this paper. On the other hand Barbados is taking the necessary steps to build up its administrative capability in the area of maritime affairs. The division of Maritime Affairs, though small at present, is headed by a director with many years' experience. This director has participated actively at IMO as the country's representative and has also been very involved in the creation of the Shipping Act. The country has also sent two students for training

at the World Maritime University. One of these students who has already graduated from the University with the MSc degree in Maritime Safety Administration whilst the other student is presently pursuing the MSc degree in General Maritime Administration. Soon the country will have a small cadre of personnel with an adequate level of competence in maritime affairs. Those administrative personnel, which could serve well in any planned development of the registry in a more general sense, could also be quite useful in guiding the government's maritime policy.

5.6. The Economic Situation

As has been said before low or no taxation is often a significant inducement to shipowners. In this regard, Barbados has already taken some positive initiatives. In an effort to attract foreign industry to Barbados the government has enacted legislation providing incentives such as a ten-year tax holiday. In shipping in particular, a Shipping Incentives Act has been passed offering quite generous concessions to shipping companies.

From what has been said it can be concluded that there are a number of positive factors already prevailing which could assist Barbados in the development of an open registry if such a decision were taken.

6.0. Conclusions and Recommendations

6.1. Conclusions

Before one proceeds to make recommendations on this subject, it is proposed briefly, to outline the conclusions reached so far. These conclusions, to a large extent, form the basis of the recommendations made.

Firstly it has been shown that there are certain advantages which Barbados could derive from offering FOC facilities whilst at the same time there are possible disadvantages that it could suffer. The principal advantages or benefits which could accrue are (1) increased revenue and (2) some employment opportunities for local seafarers, although the experience of Liberia has shown that there are only limited employment possibilities for nationals of the Flag States of FOC shipping. The possible disadvantages of Barbados developing such a Flag could be:

- 1) absence of a genuine link between itself and its vessels;
- 2) with an FOC made up largely of foreign going vessels, which will sometimes never call at our home port, it may be difficult or expensive to exercise proper Flag State control;
- 3) unless a proper registry system is developed Barbados may risk suffering a lack of credibility as a responsible maritime nation; and
- 4) as the ITF is still actively campaigning against

FOC's, Barbados may be liable for trade union action from this and other trade unions.

It must however be noted that FOC's are an established phenomenon primarily because they offer shipowners a very cost competitive way of operation. It is considered that the development of FOC's will continue as long as they retain their cost attractiveness. It is submitted however that in the meantime it represents a service to international shipping which most nations-particularly developing countries- are free to offer, should they so desire.

As was previously stated; FOC's are cost attractive, and this is mainly because they allow shipowners to operate in an environment of:

- 1) reduced or no taxation;
- 2) flexible manning regulations; and
- 3) absence or reduced bureaucratic or other control which inhibit the freedom of operation of the vessels.

Those FOC's which offer security for assets, mortgages etc, are at an even greater advantage.

Initially many traditional maritime countries were bitterly opposed to FOC's. Now their attitudes to them have changed to acceptance and support. Indeed some of these traditional maritime powers are even considering offering FOC facilities themselves. However it must be noted that of the international organisations UNCTAD and the ITF have continued their campaign against FOCs. UNCTAD has succeeded in preparing a convention on conditions for the registration of ships. It is apparently

vague, but indeed represents a first step towards the phasing out of FOC's. Should the two organisations continue their activities against FOC's then they are unlikely to continue to exist in their present form in the long run.

Finally, it has also been concluded that a development of a FOC need not be seen as an end in itself but as part of a wider plan to develop a maritime service industry and possibly a national merchant marine.

6.2. Factors Which Favour the Growth of Barbados as a ----- Port of Registry -----

There are a number of clearly identifiable features which could make Barbados attractive as a port of registry. They are its political stability, a good communications infrastructure, a highly literate population, a favourable geographic location and a tax system geared towards the attraction of foreign industry, including shipping.

It is not proposed to deal any further with Barbados' political stability, as this point has already been covered in the previous chapter. Suffice it to say that the island does enjoy a reasonable measure of political stability.

A Good Communications Infrastructure -----

In shipping, perhaps more than any other international industry, good communications facilities are today an absolute necessity. Barbados has been able to build up such an infrastructure both for internal and external

communication. The island has very modern telephone and telex facilities. In addition, it is served by a number of airlines operating particularly out of the USA and Europe, with their connections to other parts of the world. Hence Barbados directly and indirectly has access to most parts of the world.

A Highly Literate Population

Perhaps from its English colonisers, Barbados has inherited a sound educational system. Education was available for all even prior to its independence in 1966. The result of this long tradition of a sound education system is that Barbados now has an exceptionally high literacy rate. One which compares favourably with many developed countries. This high standard of education is an advantage for shipping because a literate population is a trainable population and to the extent that shipowners wish to use Barbadian seamen, then the nationals involved could relatively easily be trained to their specifications.

A Favourable Geographic Location

Barbados has quite a favourable geographical location. It is the most easterly of the Caribbean islands. So in the first instance is a gateway to the wider Caribbean area and Central America. Secondly, Barbados and indeed a number of the other Caribbean islands are located in close proximity to the USA, perhaps the largest trading country of the world and to South America which is also a considerable market. The USA in particular is one of the areas where there is substantial capital available for investment in shipping and other areas.

An Attractive Tax Policy

Although the government derives a large proportion of its revenue from direct and indirect taxation, it has actively been working towards the creation of a special tax regime designed to attract foreign investors and industry.

6.3 Factors Which May Inhibit Barbados' Development as a Port of Registry

There are also some factors which could well work against Barbados' development of an FOC and two of these are:

- 1) the presence of three already established registries in the area, and
- 2) Barbados' relatively high cost of living and per capita income.

1) The Presence of Already-Established Registries

Within the area and in relatively close proximity to Barbados there are already three established registries—Panama, Bahamas and Bermuda. The consequence of this for Barbados is that as an emerging or new registry it will be in competition with established ones. And indeed the Panamanian registry has been in existence from the early FOC days and is today one of the biggest of such institutions. Panama is already a very attractive registry to shipowners and in the case of Bahamas and Bermuda, they both have an attraction which is not naturally present in Barbados; they are both tax havens. As was stated earlier a liberal taxation policy is often quite an

inducement to shipowners. As was also stated earlier, Barbados has been able to offer a special tax incentive for shipping and other foreign industries. But for Barbados, this represents a sacrifice of one form of revenue to attract another, whilst in respect of taxation, no special sacrifices are required on the part of Bermuda and the Bahamas.

2) Relatively High Cost of Living and Per Capita Income

Having an economy which has been quite dependent on tourism has tended to make Barbados a relatively high-cost country. That means that as a labour supplying country Barbados might not be as attractive as countries such as Korea, India, etc. Also the same applies to the ability of Barbados to offer services to shipping at competitive prices. However, this last mentioned difficulty is not considered to be an insurmountable one. Barbados like many other countries, developing and otherwise, is free to enter into the competitive area of FOC shipping. Indeed, as has been shown, there are a number of factors which clearly favour this. The remainder of this paper is now devoted to suggesting what steps Barbados needs to take if it hopes to achieve this objective.

6.4. Recommendations

Economic

In the first instance Barbados would have to set a competitive level of registration and other fees. While this paper was not addressed to that specific question, what would need to be done in this regard is a comparative study of our existing fees vis-a-vis, the fees of

as many registries offering such facilities as possible. However, it must be always borne in mind that these fees should not be so ridiculously low that they are outweighed by the costs of maintaining the registry. What is needed is a level of fees which on the one hand is an attractive inducement to shipowners, whilst on the other hand resulting in a net profit to the island. Regarding taxation, it is noted that the government has already taken initiatives in this area which could have a positive impact on registration. One such initiative has been to give a generous tax concession to shipping companies, and the other has been to enter into double taxation agreements particularly the new treaty with the USA. Such double taxation agreements are particularly useful in international joint ventures and could serve as a catalyst in attracting investment capital to the island. Particularly in respect of taxation, there must be cooperation between the Ministry of Finance (which has overall responsibility for such matters) and the Ministry responsible for shipping. It is clearly recognised that any new tax incentives proposed for shipping must be fully compatible with and incorporated into the national taxation policy.

Government should also take steps to ensure that sufficient legal and other protection exists for foreign assets and mortgages, etc., in all eventualities. It is noted that the Shipping Act already addresses this question. The section on mortgages which has been reproduced as Appendix II to this paper provides inter alia, for the recording of mortgages in the register, priority of mortgages according to the date on which each mortgage is entered, etc. It is noted that this section is very wide, however, and it may be necessary

to develop this area even further perhaps by maintaining a separate register for mortgages. For in today's context adequate security must be given if one wishes to attract foreign investment.

Social

By social, one is referring to (1) manning policy and (2) the cultivation of a national interest in shipping.

When considering manning policy one is thinking of this from two points of view. Firstly in terms of having a policy which permits manning by non-nationals, and secondly in terms of setting manning scales which take full account of technological and other advances in shipping. The Barbados Shipping Act does provide for manning of its ships by non-nationals. This is considered quite important when one considers that Barbados has a small seafaring population and therefore could not satisfy the total manpower requirements of a large fleet. Also it is noted that as a country with a relatively high per capita income Barbados might not be very attractive as a labour supplying country. Although, as has been noted, Barbados has a very literate and therefore highly trainable population and perhaps this factor may compensate for and overshadow its labour costs.

Regarding manning scales it is noted that the Shipping Act in Section 83 prescribes the officers which must be carried on various classes of ships and according to Section 90:

"if a Barbadian ship goes to sea or attempts to go to sea without carrying such officers as are required to be

carried by section 83, both the owner and the master are guilty of an offence and liable on summary conviction to a fine of one thousand dollars."

One is advocating a policy which takes full account of the technological advances in today's shipping. However it must be stated quite clearly that such a policy should be at least in line with guidelines laid down on this matter in the relevant IMO and ILO Conventions.

The author had a training period in the Netherlands observing its maritime administration and the inflexible and outdated manning regulations were identified particularly by its shipowners as a significant disincentive to shipping under the Dutch Flag.

The cultivation of a national interest has only been raised at this stage because it is basically a social issue. It has far more relevance to a point which will be raised later in the paper and will be discussed at that point. Suffice it to say at this point that this idea is based on creating a wider national appreciation of and interest in shipping.

Legal/Administrative

In this area Barbados needs to ensure that it has the necessary legal and administrative framework to provide on the one hand for ease of operation for shipowners and ease of entry to and exit from the register and which on the other hand is adequate enough to maintain a reasonable level of control over its ships. One of the reasons identified by Metaxis 34* for using FOC's is to avoid controls (some of which may be bureaucratic in

nature) that limit flexibility in investment in and operation of ships. In other words, what is being sought after by using the device and in the case of relatively large concerns establishing business organisations in city states and other parts of the world is stability, i.e. stable conditions in which the firm can be the sole decision-maker in the use of its scarce resources. To the extent that it is feasible, any registration policy for Barbados shall allow for the maximum amount of operational freedom.

Ease of entry to and exit from the register must also be permitted to the extent that such is practical. In the case of entry to the register two things need to be ensured. (1) That facilities exist for the registration of vessels outside of Barbados, particularly in major shipping areas like New York, London and if possible the Far East. This service could be most economically performed (at least in the short run) by consular officers of Barbados located in or near the above mentioned areas, with central control of the registry located in Barbados. However if Barbados were to make such a use of its consular officers steps would have to be taken to ensure that they are carefully instructed in registration and other directly related procedures.

It may seem ironic, but it is important to a shipowner that he can leave a registry with the minimum of difficulty if he should so desire. For example, there may be significant changes in financial or other conditions which warrant a transfer of in registry, such as an outbreak of war. In such cases the shipowner must be allowed to leave with the minimum of hindrance. Even though freedom of exit should be permitted, some safeguards

should be maintained. Sometimes shipowners may change registration or leave registries for reasons which may be illegal, such as evasion of mortgage liabilities and fraudulent avoidance of maritime liens. One such safeguard is the issue of a deletion certificate, giving the ship permission to leave the register. Therefore when a shipowner notifies the registry of his intention to delete the ship, the registry should check to ensure that there are no illegal reasons for this action. Only then should the certificate be issued. This point also relates to the entry of a vessel onto the national register, which should not be allowed until it produces evidence that it has legally been deleted from its previous registry, where Barbados is not its first registration.

Registration of Ships for Barbados Need Not Be Seen as

an End in Itself

The final and perhaps the most important point which needs to be made is that registration of ships in Barbados should not be seen as an end in itself, but rather as part of a wider maritime development plan. As was stated earlier, one sees an FOC as a service and there is no reason why an FOC could not be one service of many related ones. Such a maritime service industry, as discussed earlier, could cover such areas as bunkering, brokerage for ship acquisition and insurance, ship chandlery and limited ship maintenance; and it is not at all considered that this list is exhaustive. It is here that the point raised about the deliberate cultivation of a national interest in shipping becomes relevant. Shipping and its related activities at present do not appear to be fully socially accepted. And particu-

larly when one is contemplating the development of a maritime service industry such as the one described, the private sector must be mobilised. Government can encourage such an industry (for example, by offering incentives) but the thrust and the necessary investment for it must come from the private sector. Shipping is basically a private sector industry and to this end the government could make use of the mass media, seminars, career showcases, etc. to increase public awareness of shipping. In the long run this maritime development plan could also include the operation of national merchant marine. But such an activity should really only be undertaken if it can result in a net gain to the Barbados balance of payments, unless of course there are compelling reasons, strategic or otherwise to the contrary.

There are a number of factors which favour the development of Barbados as a Port of Registry. However, if such a decision is taken it will mean a serious commitment of funds and of will. It should not be seen as a short term goal and therefore it should ideally be part of a long-term maritime development plan.

Appendix I
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(1981-1919)

Supplement to Official Gazette dated 11th May, 1981.

SHIPPING ACT, 1981 – 19

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Appendix II
Sections of the Barbados Shipping Act
Relating to Mortgages

THE SHIPPING ACT, 1981 - 19

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(2) On an application under subsection (1), the High Court may, with or without costs, refuse to make an order, make the order subject to such terms and conditions as it thinks fair and discharge the order when made, and generally act as the justice of the case requires.

(3) On being served with an order made under this section, a registrar shall, without being made a party to the proceeding, obey the order.

Mortgages

47. (1) The registered ship or any shares therein may be made a security for a loan or other valuable consideration.

Mortgage
of ship

(2) On production of the prescribed mortgage instrument relating to a ship, the Director shall record it in the register.

(3) It is the duty of the Director to record mortgages in the prescribed form in the order in which they are produced to him; and he shall notify on each mortgage that it has been recorded by him a memorandum of that fact and the day and hour thereof.

48. (1) When a registered mortgage relating to a ship is discharged, the Director shall, on the production of the mortgage instrument with a receipt for the mortgage money or other release endorsed

Discharge of
mortgages

thereon and duly signed and attested, make an entry in the register to the effect that the mortgage has been discharged.

(2) On entry in the register of a discharge of a mortgage the estate, if any, that passed to the mortgagee vests in the person in whom, having regard to any intervening acts or circumstances, it would have vested had the mortgage not been made.

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Priority of
mortgages

49. When there are more mortgages than one relating to the same ship or same share, the mortgagees are, notwithstanding any express, implied or constructive notice, entitled in priority between each other according to the date on which each mortgage is recorded in the register and not according to the dates of the mortgages.

Status of
mortgagee

50. Except as far as is necessary to make a mortgaged ship or mortgaged share available as a security for the mortgage debt, the mortgagee is not, by reason only of the mortgage, the owner of the ship or share; nor does the owner cease to be the owner thereof by reason only of the mortgage.

Power of
sale

51. (1) A registered mortgagee has the absolute power to dispose of the ship or share to which the registered mortgage relates and to give effectual receipts for the purchase money.

(2) When there are more persons than one registered as mortgagees of the same ship or same

share, a mortgagee is not entitled, except by order of a court, of competent jurisdiction, to sell that ship or share without the concurrence of every mortgagee whose mortgage is earlier in time than his.

52. A registered mortgage of a ship or share is not affected by any act of bankruptcy committed by the mortgagor after the date of the record of the mortgage in the register, notwithstanding that the mortgagor at the beginning of his bankruptcy had the ship or share in his possession, order or disposition or was reputed owner thereof; and the mortgagee is preferred to any right, claim or interest therein of the other creditors of the bankrupt or any trustee or assignee on their behalf.

Mortgage
and
bankruptcy

53. (1) A registered mortgage or transfer of a ship or share therein may be transferred to any person.

Transfer
of mortgage

(2) On the production of an instrument of transfer in the prescribed form, the Director shall record it by entering in the register the name of the transferee or mortgagee of the ship or share; and the Director shall endorse on the instrument of transfer a note that it has been recorded by him on the date and hour stated.

54. (1) When the interest of a mortgagee in a ship or share therein is transmitted on death or bankruptcy or by other lawful means not being a voluntary transfer, the transmission must be

Transfer on
death etc.

authenticated by a declaration of transmission by the person to whom the interest is transmitted.

(2) The declaration of transmission must be accompanied by like evidence as that required under section 44 in the case of the transmission of a ship or share therein.

(3) On receipt of a declaration of transmission of a registered mortgage accompanied by the required evidence, the Director shall enter the name of the person entitled under the transmission in the register as mortgagee of the ship or share in respect of which the transmission has occurred.

Name of Ship

Ships
names.

55. (1) A registrar may refuse the registration of a vessel by a name proposed for the registration if the name is already the name of a Barbadian ship or a name so similar as to be calculated to deceive.

(2) A Barbadian ship shall not be described by any name other than that by which the ship is for the time being registered.

Change
of name.

56. (1) A change may not be made in the name of a Barbadian ship without the previous written consent of the Director.

(2) The Director may not grant permission to change the name of a Barbadian ship unless he is satis-

Footnotes

1. According to figures obtained from the Barbados Register, on the 1st January 1982 the total tonnage was approximately 61,733.5 grt. The figure at 1st September 1986 stood at 72,126.34 grt.
2. See United Nations Convention on the Law of the Sea, 1982.
3. Flags of Convenience have otherwise been called Flags of Necessity, Free Flags, Flags of Opportunity, Facilitating Flags, etc. Each one of these terms signifies something which is thought to be a dominant characteristic of the institution.
4. See Report: Committee of Inquiry into Shipping (The Rochdale Report), p.51
5. Ibid.
6. S.J. Bergstrand, "Buy the Flag, Developments in the Open Registry Debate", p.2.
7. B.N.Metaxas "Flags of Convenience", p.17
8. A. Lamii Kromah. Thesis: "Liberia as a Maritime Flag State and its Economic Impact."
9. See P.S. Vanchiswar - Establishment/Administration of Maritime Affairs in Developing Countries. Vol.1
10. Ibid p.42
11. Lloyds List
12. S.J. Bergstrand, "Buy the Flag", p.36
13. See Rodney Carlisle, "Sovereignty For Sale".
14. Report. Committee of Enquiry into Shipping (The Rochdale Report), p.51
15. S.J. Bergstrand, "Buy the Flag", p.59
16. Ibid, p.63
17. MARIN, "The Competitive Position of the Dutch Fleet", 1984 (Restricted)
18. Ibid p.31
19. Ibid, p.49

20. ITF, "Statement on Flag of Convenience Shipping", Geneva, 1981, p.2
21. See Federation of American Controlled Shipping (FACS) "The UNCTAD/Open Registry Controversy--Lessons for the future", p.5
22. Ibid, p.44
23. Today there are three distinct groups of countries comprising the UNCTAD members. The Group of 77 composed of developing countries, the B Group composed of Western developed states; and the D Group composed of the socialist countries of Eastern Europe. However, for the purpose of elections to posts, membership is divided into 4 lists of states.
24. See FACS, "The UNCTAD/Open Registries Controversy--Lessons for the future", p.1
25. Ibid, p.34
26. Ibid, p.39
27. Banks, "Insurance companies etc. based in one country and operating outside of that country."
28. Source: Division of Maritime Affairs, Barbados.
29. Source: Barbados Port Authority.
30. For future reading on the Liberian and Bahamian Legislation, see IBA Handbook on Maritime Law, Vol. IIIA.
31. The ownership of a Barbadian ship is divided into sixty four shares.
32. According to the Barbados Shipping Act, Section 6 (3), a qualified person is a citizen or a permanent resident of Barbados or a Barbadian shipping company.
33. Caricom is a regional grouping of the English speaking Caribbean. A Caricom person is a citizen of one of the member states or a shipping company of one of the member states.

Bibliography

1. Berstrand, S.J., Buy the Flag-Developments in the Open Registry Debate
2. Branislav Gosovic, UNCTAD, North-South Encounter.
3. Carlisle, R.P., Sovereignty for Sale.
4. FACS, The UNCTAD/Open Registries Controversy lessons for the future.
5. IBA Handbook on Maritime Law, Vol. IIIA, Registration of vessels-Mortgages on vessels.
6. Metaxas, B.N., Flags of Convenience.
7. Lloyds World of Shipping in Hong Kong October 12-16, 1981, p.8. Lloyds List (daily)
9. Sturmev S.G., The Open Registry Controversy and the Development Issue, Bremen, 1983
10. Report: Committee of Inquiry into Shipping (The Rochdale Report)
11. The United Nations Convention on Conditions for Registration of Ships, Paris, 1986
12. ITF, Statement on Flag of Convenience Shipping